

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 FAYE BRYANT,

10 Plaintiff,

11 v.

12 PHARMACIA & UPJOHN COMPANY
13 LLC, et al.,

14 Defendants.

C04-1706Z

MINUTE ORDER

15
16 The following Minute Order is made by direction of the Court, the Honorable Thomas
S. Zilly, United States District Judge:

17 Defendants' Motion to Dismiss, docket no. 70, is GRANTED IN PART and DENIED
18 IN PART as follows:

19 (1) The motion to dismiss claims based on negligence and negligent
misrepresentation, Second Amended Complaint (SAC), docket no. 69, Counts I and V, is
20 GRANTED. The Washington Product Liability Act, RCW 7.72 et seq. (WPLA) is the
exclusive remedy for product liability claims in Washington and creates a single cause of
21 action. See Stanton v. Bayliner Marine Corp., 123 Wn.2d 64, 71 (1993). Although
Plaintiff's claims of negligence and negligent misrepresentation are not explicitly plead in
22 terms of the WPLA, her theories of liability provide a legal basis for recovery under the
WPLA. See Bingham v. Blair LLC, No. C10-5005RBL, 2010 WL 1608881 (W.D. Wash.
23 2010). Plaintiff may amend her complaint to fashion one cause of action pursuant to the
WPLA. Any amended complaint shall be filed on or before June 11, 2012.

24 (2) The motion to dismiss the punitive damages claim (SAC Count X) is DENIED.
25 The Court will address the issue of punitive damages in connection with the Defendants'
motion for summary judgment, docket no. 89.
26

1 (3) The motion to dismiss Plaintiff's claims for "Strict Product's Liability
2 (Defective Product)" and "Strict Products Liability (Defective Marketing and Inadequate
3 Warnings)" (SAC Counts II and III) is GRANTED. These claims are not cognizable under
4 Washington law.

5 (4) The motion to dismiss the Washington Consumer Protection Act claim (SAC
6 Count VII) is GRANTED.

7 (5) The motion to dismiss Plaintiff's Breach of Express Warranty claim (SAC
8 Count IV) is DENIED. Plaintiff's Second Amended Complaint alleges sufficient facts,
9 accepted as true, to state a claim for relief. The Court will address the express warranty
10 claim in connection with the pending motion for summary judgment.

11 (6) The motion to dismiss Plaintiff's fraud claim (SAC Count VI) under Rule 9(b)
12 is DENIED. This issue will also be addressed in connection with the motion for summary
13 judgment.

14 (7) The Clerk is directed to send a copy of this Minute Order to all counsel of
15 record.

16 Filed and entered this 21st day of May, 2012.

17 WILLIAM M. McCOOL, Clerk

18 s/ Claudia Hawney

19 By _____
20 Claudia Hawney
21 Deputy Clerk
22
23
24
25
26